

**UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NEW YORK**

NEW YORK STATE FIREARMS ASSOCIATION,

et al.,

*Plaintiffs,*

v.

Civil Action No. 23-CV-6524-FPG

STEVEN G. JAMES, in his official capacity as  
Superintendent of the New York State Police,

*Defendant.*

/

**DESIGNATION OF RECORD ON APPEAL**

Attached hereto as Exhibit A is the Designation of Record on Appeal.

Dated: May 22, 2024

Respectfully submitted,

/s/ Stephen Klein

Stephen R. Klein (*pro hac vice*)  
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*Attorneys for George Borrello, David DiPietro, William Ortman, Aaron Dorr and the New York State Firearms Association.*

## EXHIBIT A

**U.S. DISTRICT COURT**  
**U.S. District Court, Western District of New York (Rochester)**  
**CIVIL DOCKET FOR CASE #: 6:23-cv-06524-FPG**

New York State Firearms Association et al v. Chiumento  
Assigned to: Hon. Frank P. Geraci, Jr.  
Cause: 42:1983 Civil Rights Act

Date Filed: 09/13/2023  
Jury Demand: None  
Nature of Suit: 950 Constitutional - State Statute  
Jurisdiction: Federal Question

**Plaintiff**

**New York State Firearms Association**

represented by **Benjamin T. Barr**  
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*LEAD ATTORNEY*

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**Plaintiff**

**George Borrello**

represented by **Benjamin T. Barr**

(See above for address)

*LEAD ATTORNEY*

*PRO HAC VICE*

*ATTORNEY TO BE NOTICED*

**Ginger D. Schroder**

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*LEAD ATTORNEY*

*ATTORNEY TO BE NOTICED*

**Linda H. Joseph**

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*LEAD ATTORNEY*

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**Stephen R. Klein**

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**Plaintiff**

**David DiPietro**

represented by **Benjamin T. Barr**

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*LEAD ATTORNEY*

*PRO HAC VICE*

*ATTORNEY TO BE NOTICED*

**Ginger D. Schroder**

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**Linda H. Joseph**

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**Stephen R. Klein**

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*ATTORNEY TO BE NOTICED*

**Plaintiff**

**William Ortman**

represented by **Benjamin T. Barr**  
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*LEAD ATTORNEY*  
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**Ginger D. Schroder**  
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**Stephen R. Klein**  
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**Plaintiff**

**Aaron Dorr**

represented by **Benjamin T. Barr**  
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*ATTORNEY TO BE NOTICED*

**Ginger D. Schroder**  
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**Stephen R. Klein**  
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*LEAD ATTORNEY*  
*PRO HAC VICE*  
*ATTORNEY TO BE NOTICED*

V.

**Defendant****Dominick L. Chiumento***in his official capacity as Acting  
Superintendent of the New York State  
Police*represented by **Heather Lynn McKay**New York State Attorney General's Office  
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**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**

<b>Date Filed</b>	<b>#</b>	<b>Docket Text</b>
09/13/2023	<a href="#"><u>1</u></a>	COMPLAINT against Steven A. Nigrelli \$ 402 receipt number ANYWDC-4974753, filed by William Ortman, New York State Firearms Association, David DiPietro, George Borrello. (Attachments: # <a href="#"><u>1</u></a> Civil Cover Sheet, # <a href="#"><u>2</u></a> Summons)(Schroder, Ginger) (Entered: 09/13/2023)
09/13/2023		Case Assigned to Hon. Frank P. Geraci, Jr. Notification to Chambers of on-line civil case opening. (TMK) (Entered: 09/13/2023)
09/13/2023		AUTOMATIC REFERRAL to Mediation The ADR Plan is available for download at <a href="http://www.nywd.uscourts.gov/alternative-dispute-resolution">http://www.nywd.uscourts.gov/alternative-dispute-resolution</a> .(TMK) (Entered: 09/13/2023)

09/13/2023		Notice of Availability of Magistrate Judge: A United States Magistrate of this Court is available to conduct all proceedings in this civil action in accordance with 28 U.S.C. 636c and FRCP 73. The Notice, Consent, and Reference of a Civil Action to a Magistrate Judge form (AO-85) is available for download at <a href="http://www.uscourts.gov/services-forms/forms">http://www.uscourts.gov/services-forms/forms</a> . (TMK) (Entered: 09/13/2023)
09/13/2023	<u>2</u>	Summons Issued as to Steven A. Nigrelli. (TMK) (Entered: 09/13/2023)
09/15/2023	<u>3</u>	Letter filed by George Borrello, David DiPietro, New York State Firearms Association, William Ortman as to Steven A. Nigrelli to <i>Hon. Frank P. Geraci, Jr.</i> (Joseph, Linda) (Entered: 09/15/2023)
09/15/2023	<u>4</u>	AMENDED COMPLAINT against All Defendants, filed by William Ortman, New York State Firearms Association, David DiPietro, George Borrello, Aaron Dorr. (Attachments: # <u>1</u> Exhibit A - Dorr Declaration) (Joseph, Linda) Modified on 9/18/2023 (JHF). (Entered: 09/15/2023)
09/15/2023	<u>5</u>	MOTION for Temporary Restraining Order <i>and Preliminary Injunction</i> by George Borrello, David DiPietro, New York State Firearms Association, William Ortman, Aaron Dorr. (Attachments: # <u>1</u> Memorandum in Support, # <u>2</u> Supplement TRO Witness and Exhibit List, # <u>3</u> Supplement Amended Complaint, # <u>4</u> Supplement Exhibit A to Amended Complaint, # <u>5</u> Text of Proposed TRO Order, # <u>6</u> Text of Proposed PI Order) (Joseph, Linda) Modified on 9/18/2023 (JHF). (Entered: 09/15/2023)
09/15/2023	<u>6</u>	MOTION to Expedite by George Borrello, David DiPietro, New York State Firearms Association, William Ortman, Aaron Dorr. (Attachments: # <u>1</u> Supplement Notice of Motion, # <u>2</u> Supplement Memorandum of Law, # <u>3</u> Supplement TRO Witness and Exhibit List, # <u>4</u> Supplement Amended Complaint, # <u>5</u> Supplement Exhibit A - Dorr Declaration to Amended Complaint, # <u>6</u> Supplement TRO Proposed Order, # <u>7</u> Supplement PI Proposed Order, # <u>8</u> Text of Proposed Order for Expedited Hearing) (Joseph, Linda) Modified on 9/18/2023 (JHF). (Entered: 09/15/2023)
09/15/2023	<u>7</u>	MOTION to appear pro hac vice ( Filing fee \$ 200 receipt number ANYWDC-4977309.) by George Borrello, David DiPietro, New York State Firearms Association, William Ortman, Aaron Dorr. (Attachments: # <u>1</u> Supplement Sponsoring Affidavit, # <u>2</u> Supplement Petition, # <u>3</u> Supplement Attorney's Oath, # <u>4</u> Supplement Appendix to Civility Principles Oath of Office, # <u>5</u> Supplement Attorney Database and E-Filing Registration Form, # <u>6</u> Supplement Motion to Admit Stephen Klein) (Joseph, Linda) Modified on 9/18/2023 (JHF). (Entered: 09/15/2023)
09/18/2023		E-Filing Notification: Clerk revised the docket text of <u>4</u> , <u>5</u> , <u>6</u> and <u>7</u> and added new plaintiff "Aaron Dorr" to the text and to the docket. (JHF) (Entered: 09/18/2023)
09/20/2023	<u>8</u>	Corporate Disclosure Statement by New York State Firearms Association. (Schroder, Ginger) Modified on 9/20/2023 (JHF). (Entered: 09/20/2023)
09/20/2023		E-Filing Notification: Clerk revised the docket text of <u>8</u> Corporate Disclosure Statement to show that only New York State Firearms Association was the filer of the document and not the other plaintiffs as well. (JHF) (Entered: 09/20/2023)
09/21/2023	<u>9</u>	DECISION AND ORDER: For the reasons stated in the Order, Plaintiffs' <u>5</u> Motion for a Temporary Restraining Order is DENIED. The Court orders the briefing schedule on the preliminary injunction motion against Defendant as follows: By 5:00 P.M. on September 22, 2023, Plaintiffs shall serve a copy of this Decision & Order on

		Defendant and file an affidavit of service confirming such. By 5:00 P.M. on October 13, 2023, Defendant shall file its response to Plaintiffs' motion for a preliminary injunction. By 5:00 P.M. on October 27, 2023, Plaintiffs may file a reply. The Court reserves the right to schedule oral argument should it determine the need exists. SO ORDERED. Signed by Hon. Frank P. Geraci, Jr. on 9/21/2023. (AJW) (Entered: 09/21/2023)
09/22/2023	<a href="#">10</a>	AFFIDAVIT of Service for Decision and Order dated 9/21/2023 served on Attorney General's Office and Steven Nigrelli on 9/22/2023, filed by George Borrello, David DiPietro, Aaron Dorr, New York State Firearms Association, William Ortman. (Attachments: # <a href="#">1</a> Exhibit A - Hand Delivery Confirmation, # <a href="#">2</a> Exhibit B - Certified Mail Receipt)(Schroder, Ginger) (Entered: 09/22/2023)
09/22/2023	<a href="#">11</a>	CERTIFICATE OF SERVICE by George Borrello, David DiPietro, Aaron Dorr, New York State Firearms Association, William Ortman re <a href="#">9</a> Order on Motion to Expedite. (Schroder, Ginger) (Entered: 09/22/2023)
09/27/2023	<a href="#">12</a>	MOTION to appear pro hac vice of <i>Benjamin Barr</i> ( Filing fee \$ 200 receipt number ANYWDC-4985641.) by George Borrello, David DiPietro, Aaron Dorr, New York State Firearms Association, William Ortman. (Attachments: # <a href="#">1</a> Motion to Admit Benjamin Barr Pro Hac Vice, # <a href="#">2</a> Text of Proposed Order, # <a href="#">3</a> Petition for Admission Pro Hac Vice, # <a href="#">4</a> Affidavit of Sponsor Ginger D. Schroder, # <a href="#">5</a> Attorney's Oath, # <a href="#">6</a> Oath of Office, # <a href="#">7</a> Attorney Database & Electronic Case Filing Registration Form, # <a href="#">8</a> Certificate of Service)(Schroder, Ginger) (Entered: 09/27/2023)
10/06/2023	<a href="#">13</a>	AFFIDAVIT of Service for Summons, Complaint, Civil Cover Sheet, Amended Complaint with Exhibit A, Motion for Temporary Restraining Order and supporting papers, Motion to Expedite and supporting papers, Motion to Appear Pro Hac Vice and supporting papers, served on Attorney General's Office on 9/26/2023, filed by George Borrello, David DiPietro, New York State Firearms Association, William Ortman. (Joseph, Linda) (Entered: 10/06/2023)
10/11/2023	<a href="#">14</a>	NOTICE of Appearance by James M. Thompson on behalf of Steven A. Nigrelli (Thompson, James) (Entered: 10/11/2023)
10/11/2023	<a href="#">15</a>	MOTION for Leave to File Excess Pages in <i>upcoming Preliminary Injunction opposition brief</i> by Steven A. Nigrelli.(Thompson, James) (Entered: 10/11/2023)
10/12/2023	16	TEXT ORDER granting <a href="#">15</a> Motion for Leave to File Excess Pages. Defendant may file up to but not exceeding 35 pages in its memorandum in opposition to Plaintiffs' <a href="#">5</a> motion for a preliminary injunction. Plaintiffs may file up to but not exceeding 20 pages in reply. SO ORDERED. Signed by Hon. Frank P. Geraci, Jr. on 10/12/2023. (AJW) (Entered: 10/12/2023)
10/13/2023	<a href="#">17</a>	NOTICE of Appearance by Matthew D. Brown on behalf of Steven A. Nigrelli (Brown, Matthew) (Entered: 10/13/2023)
10/13/2023	<a href="#">18</a>	NOTICE of Appearance by Heather Lynn McKay on behalf of Steven A. Nigrelli (McKay, Heather) (Entered: 10/13/2023)
10/13/2023	<a href="#">19</a>	RESPONSE in Opposition re <a href="#">5</a> MOTION for Temporary Restraining Order and <i>Preliminary Injunction</i> filed by Steven A. Nigrelli. (Attachments: # <a href="#">1</a> Declaration of Dominick L. Chiumento, # <a href="#">2</a> Declaration of Michael W. Deyo, # <a href="#">3</a> Declaration of James M. Thompson, # <a href="#">4</a> Exhibit 1 - 1755 Johnson Dictionary Definition of "Infringe", # <a href="#">5</a> Exhibit 2 - 1775 Ash Dictionary Definition of "Infringe", # <a href="#">6</a> Exhibit 3 - 1755 Johnson



Dictionary Definition of "Abridge", # [7](#) Exhibit 4 - 1806 Webster Dictionary Definition of "Abridge", # [8](#) Exhibit 5 - 1806 Webster Dictionary Definition of "Infringe", # [9](#) Exhibit 6 - 1755 Johnson Dictionary Definition of "License", # [10](#) Exhibit 7 - 1664 New York Law Against Trading Gunpowder and Ammunition, # [11](#) Exhibit 8 - 1664 Pennsylvania Law Against Trading Gunpowder and Ammunition, # [12](#) Exhibit 9 - 1644 Connecticut Law Against Trading Gunpowder and Ammunition, # [13](#) Exhibit 10 - 1633 Massachusetts Law Against Trading Gunpowder and Ammunition, # [14](#) Exhibit 11 - 1744 Letter from New York Governor About Forbidding Ammunition Exports, # [15](#) Exhibit 12 - 1637 Massachusetts Law Disarming Protestant Dissidents of Ammunition, # [16](#) Exhibit 13 - 1677 Rhode Island Law Disarming Native Americans of Ammunition, # [17](#) Exhibit 14 - 1756 Virginia Law Disarming Roman Catholics of Gunpowder and Ammunition, # [18](#) Exhibit 15 - 1776 Massachusetts Law Disarming Persons Disaffected to America of Ammunition, # [19](#) Exhibit 16 - 1777 New Jersey Law Disarming Persons Disaffected to America of Ammunition, # [20](#) Exhibit 17 - 1778 Pennsylvania Law Disarming Persons Disaffected to America of Ammunition, # [21](#) Exhibit 18 - 1680 Virginia Law Imposing Tax in Gunpowder, # [22](#) Exhibit 19 - 1789 Rhode Island Law Taxing Gunpowder Imports, # [23](#) Exhibit 20 - 1838 Florida Law Requiring Licenses and Taxes to Sell Guns, # [24](#) Exhibit 21 - 1844 Mississippi Law Taxing Pistols, # [25](#) Exhibit 22 - 1853 Virginia Law Taxing Sales Including Gunpowder, # [26](#) Exhibit 23 - 1866 North Carolina Law Taxing Pistols, # [27](#) Exhibit 24 - 1869 Delaware Law Taxing Manufacturers of Gunpowder, # [28](#) Exhibit 25 - 1883 Ohio Law Imposing Fees on Gunpowder Vendors, # [29](#) Exhibit 26 - 1883 Tennessee Law Banning Sales of Pistol Cartridges, # [30](#) Exhibit 27 - 1884 Alabama Law Imposing Fee on Dealers in Pistol Cartridges, # [31](#) Exhibit 28 - 1887 Law Increasing License Fee on Dealers in Pistol Cartridges, # [32](#) Exhibit 29 - 1890 South Carolina Law Imposing Large License Fee on Sellers of Pistol Cartridges, # [33](#) Exhibit 30 - 1891 South Carolina Law Expanding License Fee to Rifle Cartridges, # [34](#) Exhibit 31 - 1893 Georgia Treasurer's Report Showing Revenue From Pistol Dealers' Tax, # [35](#) Exhibit 32 - 1895 Virginia Law With Special License And Tax Requirements for Pistol Cartridge Dealers, # [36](#) Exhibit 33 - 1763 New York City Law Imposing Regulatory Fee For Gunpowder Cart-men, # [37](#) Exhibit 34 - 1776 New Jersey Law Imposing Regulatory Fee for Gunpowder Inspection, # [38](#) Exhibit 35 - 1820 New Hampshire Law Imposing Regulatory Fee for Gunpowder Inspection, # [39](#) Exhibit 36 - 1826 Connecticut Law Empowering City To Impose Gunpowder Sales Fee, # [40](#) Exhibit 37 - 1883 California Law Empowering Cities To Impose Licenses And Fees On Sale of Gunpowder, # [41](#) Exhibit 38 - 1881 Illinois Law Requiring Sellers of Deadly Weapons to Keep Public Registry of Sales) (Thompson, James) (Entered: 10/13/2023)

10/13/2023	<a href="#">20</a>	MOTION to Substitute Party <i>in light of Superintendent Nigrelli's retirement</i> by Steven A. Nigrelli.(Thompson, James) (Entered: 10/13/2023)
10/18/2023	<a href="#">21</a>	AFFIDAVIT of Service for Summons, Complaint and Amended Complaint served on Steven Nigrelli on 9/21/2023, filed by George Borrello, David DiPietro, Aaron Dorr, New York State Firearms Association, William Ortman. (Attachments: # <a href="#">1</a> Exhibit A - Signed Return Receipt, # <a href="#">2</a> Exhibit B - USPS Online Tracking)(Schroder, Ginger) (Entered: 10/18/2023)
10/23/2023	<a href="#">22</a>	Consent MOTION for Extension of Time to File Answer <i>and Correction Regarding Service</i> by Steven A. Nigrelli.(Thompson, James) (Entered: 10/23/2023)
10/24/2023	23	TEXT ORDER: The Court acknowledges the Parties' <a href="#">20</a> MOTION to substitute party. Because Superintendent Nigrelli has resigned, Superintendent Dominick L. Chiumento

is automatically substituted as the defendant in this action pursuant to Federal Rule of Civil Procedure 25(d). The Clerk of Court is hereby directed to update in the case caption to reflect the name of the substituted party. The Court also acknowledges the Parties' [22](#) Consent MOTION for Extension of Time to File Answer. Defendant's deadline to answer or otherwise respond to the Complaint is extended until 30 days after the resolution of the [5](#) preliminary injunction motion currently pending, including any applicable appeals or petitions for certiorari. SO ORDERED. Signed by Hon. Frank P. Geraci, Jr. on 10/24/2023. (AJW)

**Clerk to Follow up** (Entered: 10/24/2023)

10/25/2023		E-Filing Notification: Clerk updated case caption and substituted Dominick L. Chiumento for defendant Steven A. Nigrelli per 23 Text Order. (JHF) (Entered: 10/25/2023)
10/27/2023	<a href="#">24</a>	REPLY/RESPONSE to re <a href="#">5</a> MOTION for Temporary Restraining Order <i>and Preliminary Injunction</i> Plaintiffs' Reply Brief in Support of Motion for Preliminary Injunction filed by George Borrello, David DiPietro, Aaron Dorr, New York State Firearms Association, William Ortman. (Attachments: # <a href="#">1</a> Declaration of G. Schroder, # <a href="#">2</a> Exhibit 1 - Declaration of Vern Dorgan, # <a href="#">3</a> Exhibit 2 - Declaration of Francis Rice, # <a href="#">4</a> Exhibit 3 - Declaration of Frank Yuroshoski, # <a href="#">5</a> Exhibit 4 - Declaration of Harry Clauss, # <a href="#">6</a> Exhibit 5 - Declaration of Kimberly Crast, # <a href="#">7</a> Exhibit 6 - Declaration of Ed Jacobs, # <a href="#">8</a> Exhibit 7 - Declaration of Darrell Eckhard, # <a href="#">9</a> Exhibit 8 - Declaration of David Porrata, # <a href="#">10</a> Exhibit 9 - Declaration of John Ryan, # <a href="#">11</a> Exhibit 10 - Declaration of Rob Ralyea) (Schroder, Ginger) (Entered: 10/27/2023)
10/30/2023	<a href="#">25</a>	MOTION to Strike <i>Declarations Improperly Filed on Reply</i> by Dominick L. Chiumento.(Thompson, James) (Entered: 10/30/2023)
10/31/2023	<a href="#">26</a>	RESPONSE to Motion re <a href="#">25</a> MOTION to Strike <i>Declarations Improperly Filed on Reply</i> filed by George Borrello, David DiPietro, Aaron Dorr, New York State Firearms Association, William Ortman. (Schroder, Ginger) (Entered: 10/31/2023)
12/11/2023	<a href="#">27</a>	Letter filed by Dominick L. Chiumento as to Dominick L. Chiumento <i>Regarding Recent Significant Second Circuit Decisions in Firearms Cases</i> . (Attachments: # <a href="#">1</a> Exhibit 1 - Second Circuit Decision in Antonyuk v. Chiumento, # <a href="#">2</a> Exhibit 2 - Second Circuit Decision in Gazzola v. Hochul)(Thompson, James) (Entered: 12/11/2023)
05/02/2024	28	TEXT ORDER granting <a href="#">7</a> Motion for Pro Hac Vice; granting <a href="#">12</a> Motion for Pro Hac Vice. SO ORDERED. Signed by Hon. Frank P. Geraci, Jr. on 5/2/2024. (AJW)
		<b>Clerk to Follow up</b> (Entered: 05/02/2024)
05/02/2024	<a href="#">29</a>	DECISION AND ORDER: For the reasons stated in the Order, Plaintiffs' motion for a preliminary injunction, ECF No. <a href="#">5</a> , is DENIED. The Superintendent's motion to Strike Declarations Improperly Filed, ECF No. <a href="#">25</a> , is DENIED. All claims asserted by NYSFA are DISMISSED WITHOUT PREJUDICE. SO ORDERED. Signed by Hon. Frank P. Geraci, Jr. on 5/2/2024. (AJW) (Entered: 05/02/2024)
05/13/2024	<a href="#">30</a>	NOTICE OF INTERLOCUTORY APPEAL as to <a href="#">29</a> Decision and Order by George Borrello, David DiPietro, Aaron Dorr, New York State Firearms Association, William Ortman (Filing fee \$605, receipt number ANYWDC-5179260). (Klein, Stephen) Modified on 5/14/2024 (JHF). (Entered: 05/13/2024)

05/14/2024	E-Filing Notification: Clerk revised docket text to <a href="#">30</a> to "NOTICE OF INTERLOCUTORY APPEAL" to clarify the filing event. (JHF) (Entered: 05/14/2024)
05/14/2024	<p>Within 14 days of filing <a href="#">30</a> Notice of Interlocutory Appeal, the appellant is required to electronically file with the District Court an index of filed documents it wishes the Court of Appeals to consider, called Designation of Record on Appeal. After receipt, the Clerk's Office will certify and transmit the index to the Circuit.</p> <p>Pursuant to Local Rule 12.1 of the US Court of Appeals for the Second Circuit, Forms C and D must be completed within 14 days after the filing of a notice of appeal. Forms C and D can be obtained at: &lt;<a href="http://www.ca2.uscourts.gov">www.ca2.uscourts.gov</a>&gt;. (JHF) (Entered: 05/14/2024)</p>

PACER Service Center			
Transaction Receipt			
05/22/2024 09:28:18			
<b>PACER Login:</b>	kleinpacer	<b>Client Code:</b>	
<b>Description:</b>	Docket Report	<b>Search Criteria:</b>	6:23-cv-06524-FPG
<b>Billable Pages:</b>	8	<b>Cost:</b>	0.80

**CERTIFICATE OF SERVICE**

I hereby certify that on May 22, 2024, the foregoing was electronically filed with the Clerk of the Court using the CM/ECF system and that copies were sent by email and to all counsel of record.

/s/ Stephen Klein

Stephen R. Klein